



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCB/143312

PRELIMINARY RECITALS

Pursuant to a petition filed August 22, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on October 02, 2012, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly sought to discontinue the petitioner's Child Care benefits (CC) due to lack of cooperation with the child support agency.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. The petitioner is an ongoing recipient of childcare benefits (CC).

3. On July 12, 2012 the county agency received a notification from the child support agency that petitioner should be sanctioned for failing to cooperate with child support.
4. On July 13, 2012, the county agency issued written notice to the petitioner advising that her CC would be discontinued effective July 31, 2012 failing to cooperate with child support.
5. The agency's basis for discontinuance was that the petitioner failed to cooperate with the child support agency in establishing the paternity of her child, [REDACTED]. The petitioner contests this rationale.
6. The petitioner named one man, "Arthur V." for purposes of this hearing, as the father. This man was excluded by paternity testing as the father. There is no declared legal father for this child.
7. At some point thereafter, the petitioner was asked to name another potential father. She gave the first name of one man that she considered another possibility. She had no other information than his first name. The interviewer concluded that the petitioner was not being cooperative, and forwarded a sanction request to the agency.

DISCUSSION

As a nonfinancial condition of CC eligibility, a parent in a W-2 group must cooperate with efforts directed at establishing paternity and obtaining support payments or any other payments or property to which that parent and any minor child of that parent may have rights, or for which that parent may be responsible, unless the parent has good cause for failing to cooperate. See Wis. Adm. Code §DCF 102.01. If the parent does not cooperate, that parent can lose CC. Wis. Admin. Code §DCF 102.09; see also *Child Care Policy Manual (Manual)*, §1.4.7, available online at <http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter1.pdf>. Although the CSA makes the determination of non-cooperation, the parent may appeal the termination of her CCB in a fair hearing.

Standards for cooperation with child support provide that unless the W-2 agency determines that a good cause exemption applies, each custodial parent who is a member of a W-2 group shall cooperate in good faith with efforts directed at all of the following for any minor child of that parent:

1. Identifying and locating an absent parent.
2. Establishing the paternity of any child of the custodial parent.
3. Obtaining any support payments or any other payments or property to which that parent and any minor child of that parent may have rights.

Wis. Admin. Code §DCF 102.03.

The DCF has also provided standards for what are considered acts of cooperation.

Acts of cooperation for a custodial parent include any action that is relevant to achieve the purposes in sub. (1) (a) including all of the following:

1. Providing verbal information, written information, or other evidence that the custodial parent knows, possesses, or might reasonably obtain or signing an affidavit declaring a lack of information, subject to penalty of false swearing pursuant to s. 946.32, Stats.
2. Attending interviews and responding to written requests for information by the child support agency.
3. Appearing as a witness at hearings or other legal proceedings.
4. Submitting to genetic tests pursuant to judicial or administrative order.

5. Paying to the department or its designee any court-ordered child support payments received directly from the absent parent after an assignment under s. 49.145 (2) (s), Stats., has been made.

Wis. Admin. Code §.

There was no dispute that the petitioner first named Arthur V. as the father, and that he was excluded by testing as the father. The petitioner then supplied a name of another man, first name only, as a potential father. She testified credibly that this was the only information she had from the conception occurring approximately 3 years ago. No one from the child support agency appeared at the hearing. No other information was provided to show that petitioner was being less than honest, that she had reason to know the name of the father and that she was not providing it, or being otherwise uncooperative. She has provided the verbal information as to the paternity of her child to the best of her knowledge. The language "signing an affidavit declaring a lack of information, subject to penalty of false swearing pursuant to s. 946.32, Stats." infers that her lack of information can be reduced to writing under the penalty of perjury, and then if the child support agency has information that petitioner's lack of information is perjurious, a sanction would be appropriate at that time, let alone a criminal felony charge. There is no information that petitioner was requested to sign such an affidavit either. In sum, I do not find that the agency has supported a finding that petitioner was uncooperative, and therefore the sanction was placed in error.

CONCLUSIONS OF LAW

1. The child support agency failed to show that it correctly determined that the petitioner failed to cooperate with a child support agency.
2. The agency incorrectly discontinued the petitioner's CC eligibility effective July 31, 2012.

THEREFORE, it is

ORDERED

The matter is remanded to the agency to take the administrative steps necessary to remove the child support sanction, redetermine petitioner's eligibility for CCB from July 31, 2012 forward, and to issue a notice of decision regarding same. Because the agency may require verifications to redetermine benefits, I am ordering that these actions shall be taken within thirty (30) days of the date of this decision. If no verifications are necessary, the actions shall be taken within ten (10) days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

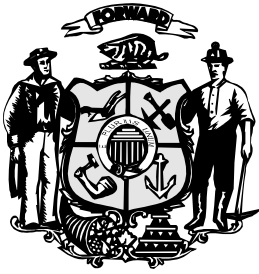
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of October, 2012

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

c: Child Care Benefits, Marcie.Stebbeds@wisconsin.gov - Marcie.Stebbeds@wisconsin.gov
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The preceding decision was sent to the following parties on October 24, 2012.

Kenosha County Human Service Department
Child Care Benefits